identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: MAY 30 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the Form I-140 petition on March 17, 2010, the petitioner was a [redacted], expected to receive his degree in May 2010. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States

economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989). Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

An unsigned statement accompanying the initial filing of the petition identified the petitioner as "an expert in Biblical Interpretation of [the] New Testament[,] specifically the Postcolonial Interpretation of the Bible." There followed a list of evidentiary submissions, with no further discussion of how the submitted materials establish the petitioner's eligibility for the waiver.

Much of the petitioner's initial submission consisted of witness letters. Each witness praised the petitioner as an expert in his subject, with some claiming that the petitioner has earned wide recognition in his field.

[redacted] provided an overview of the petitioner's work:

> As a theologian and scholar of New Testament Studies, [the petitioner's] work in the field may be described as on the cutting edge. Thus, one focus of his work has been the economic dimensions of the writings, primarily in Gospel Studies in general and above all in the Gospel of Luke in particular. In this regard, he has been developing a new interdisciplinary approach involving economics, examining the economic proposal advanced by the Gospel of Luke within the overall political economy subscribed to by the Roman Empire. Such research constitutes a highly vibrant and creative approach today. Similarly, another focus of his work has been the cultural dimensions of the interpretation of the writings by contemporary critics and communities. In this regard, he has been pursuing a novel critical approach involving culture, analyzing the lines of interpretation at work in Asian and Asian American circles. Such research represents, again, a most creative and vibrant approach today.

[redacted], emeritus professor of biblical hermeneutics at the University of Birmingham, United Kingdom, stated:

> [The petitioner] has asked me to write this letter to explain his critical role as one of the contributors to the volume, *A Postcolonial Commentary on the New Testament Writings*. . . .
>
> This volume features for the first time a comprehensive application of postcolonial theory to the entire body of New Testament biblical writings. Since its emergence as one of the most innovative theoretical reading practices of our time, postcolonial criticism has expanded and developed into a potent voice in the field of biblical studies. . . .
>
> [The petitioner] was specifically invited to contribute because of his outstanding academic work which resonates with the main thrust of the volume. . . . His piece in the volume offered an alternative way of reading the Letter of Jude. The inter-textual approach which places the New Testament letter alongside both Korean Christian Minjung theology and Buddhist Minjung praxis is something which has not been attempted before.
>
> The authors who were invited to contribute were all world leaders in biblical studies. These are the scholars who are at the forefront of shaping and moving forward the debate in biblical studies. . . .
>
> [The petitioner] also submitted an article titled "Revisiting the Parable of the Prodigal Son for Decolonization: Luke's Reconfiguration of *Oikos* in 15:11-32,["] which was published in *Biblical Interpretation: A Journal of Contemporary Approaches*. . . .

This article was truly extraordinary. It dealt with the early Christian Gospels' most radical construction of the household (Like 15:11-32), which is shown to have created extensive opportunities and freedoms over and against the constraints of the Roman Empire.

. . . What makes [the petitioner] so unique and well known is not only his ability to question received wisdom but also his ability to provide alternative answers. He is not afraid to address difficult questions posed by New Testament studies. His research so far has been exceptional.

[redacted], assistant professor of philosophy and literature at Bond University, Australia, stated:

As the Editor of *The Bible and Critical Theory*, I am responsible for coordinating the review of submitted articles, including the assignment of peer reviewers. . . . It is in this capacity that I came to know [the petitioner], an exemplary scholar of New Testament. . . .

He has served as a reviewer for our Journal based on the fact that he has published extensively in the areas of biblical studies in general and New Testament in particular. His expertise in these two areas makes him very unique as a reviewer. . . .

We seek scholars who not only have published extensively in their areas of expertise but that their own publications have been highly recognized for their originality and novel approaches.

[The petitioner] is also a sought after author. His article, "*Revelation of Sale: An Intercultural Reading of Revelation 18 from East Asian Perspective*," published in the June 2008 issue was remarkable. His original article focused on the early Christians' radical critique of economy, one which challenges both the inequality and reciprocity that were embedded in the Roman Empire. In particular, he explained how John the Seer saw economic exchanges between center and periphery, metropolis and the margins, imperial and colonial as doomed. [The petitioner] described how these sorts of connections are also evident, today, by way of globalization. . . . He then explained that for its victims, poverty often functions as the will of 'God.' In this regard, the Seer's oracle emerges not from a 'new heaven and earth,' but from the midst of colonial space and time, infested with scarcity and hunger. This article also described how for an East Asian postcolonial, the vision as such has renewed poignancy in light of the cross-cultural and trans-historical constraints of imperialism and colonialism. His article is an intercultural economic critique of Revelation 18 from an East Asian global perspective.

[redacted] and a member of the steering committee of the Society of Biblical Literature Contextual Biblical Group, stated:

> The fact that numerous scholars in the field cited [the petitioner's] published work and he has repeatedly [been] asked to present his work at some of the most prestigious international meetings attests to the veracity that he has offered exceptional contributions to the field that have been recognized internationally. . . .
>
> [The petitioner] has been invited several times to present his work at the Society of Biblical Literature Annual Meeting. . . . At each Annual Meeting, there are over 10,000 participants but only 100 of the most original and important works are selected for oral presentations. Being selected to present at this prestigious international meeting is truly an honor. [The petitioner] has been continuously asked to present his work since 2005. . . . I have been impressed by his productivity and originality of studies. . . .
>
> As you can see, [the petitioner] is a pioneer in the field of biblical interpretation for his study of the New Testament. His goal is to understand the historical, cultural significance of the Bible in the contemporary world. This is possible only through his integration of several methods in biblical interpretation such as social, political analysis of the ancient and modern times.

[redacted] called the petitioner "a well respected Asian scholar in the area of Christian Scripture" and described a "truly extraordinary" article that the petitioner had submitted for publication in the aforementioned journal:

> [H]is approach was comparative. His reading acknowledged multiplicity of readings that does not confront readers with an "imperative" objectivity, as traditional critical practices do, but with an "ethical" and religious question: "Why do I see this interpretation most helpful to particular people in a particular context?" Without hiding the self and its worlds, his reading became more critical. . . .
>
> In one way or another, [the petitioner] argues for a broader sense of the congruence between the "People of God" and the "world" (however they are defined) and provides a venue in which to re-read the Bible in a new and perceptive way. This sort of dialogical reading turns into a process of discovery that explores how believer-readers relate the biblical text in a meaningful way to their lives.
>
> [The petitioner's] contribution, therefore, is significant on various counts. Firstly, from the standpoint of biblical criticism, his work should be seen as a contribution to moral commitments of biblical interpretation. . . . Secondly, in such a dialogue with

> others, traditional voices and new voices must play an equal role. . . . His work has since been a keen contribution to the believer-readers' revisioning of their own scripture and their religious and theological tradition.

The petitioner submitted copies of his own published work, but no evidence to support the claim that "numerous scholars in the field cited his published work." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner submitted two reviews of *A Postcolonial Commentary on the New Testament Writings*, both of which appeared in the *Review of Biblical Literature* (*RBL*) in 2008. Although the petitioner is male, reviewer [redacted] repeatedly and consistently referred to the petitioner with feminine pronouns. [redacted] only comment on the petitioner's chapter is that is one of several "papers [that] stand a little to one side of the general thrust of the volume." While praising the book as "a major and welcome achievement," Draper also observed: "there is little agreement on what postcolonial interpretation actually is," and found that one editor's "somewhat laborious attempt to classify the different authors in terms of four criteria – configurations, approaches, findings, and stances – . . . highlighted the incoherence rather than the commonality of postcolonialism as a methodology." The record shows that the petitioner himself wrote a number of reviews for *RBL*.

The director issued a request for evidence on October 27, 2010, instructing the petitioner to explain "the significance of the beneficiary's accomplishments in the field, supported by corroborative, independent, documentary evidence." The director acknowledged the petitioner's submission of witness letters, but found them to be "more akin to reference letters than to testimonials to [the petitioner's] individual potential to benefit the country on a 'national impact' level." The director found that the petitioner had not established the impact of his work on his field.

In response, counsel repeated the claim that the petitioner "is a world-renowned scholar" whose "research is of great importance," but the petitioner submitted no concrete evidence to support these claims. If the petitioner is "world-renowned" as claimed, then evidence of such renown ought to exist in its own right without having to rely on newly-written letters. The petitioner submitted additional witness letters, and counsel apologized that there was insufficient time to procure even more such letters. Counsel did not explain why the evidence of the petitioner's reputation and influence appears to exist only in the form of witness letters, solicited specifically in order to support the petition.

The petitioner, in a new statement, explained the nature of his work:

> I have to mention that biblical interpretation has powerful effects on people and their lives. Hence, critical readers have to make explicit at the outset their own context and bring to critical understanding their own perspectives. . . .

> The breadth of my New Testament work in particular encompasses the Greco-Roman context of earliest Christianity and modern notions of cultural history. . . .
>
> The fact that I have been asked to present my work shows that my work is of great interest to [scholarly] societies. Not many are invited to present at these meetings. However, I have been repeatedly invited not only to present, but also to publish that work in peer-reviewed proceedings and journals.

The petitioner submitted no evidence to support his claim that presentations and publications are rare in his field. Because the petitioner did not indicate that biblical commentary enters circulation through any means other than presentation and publication, he appears to imply that the majority of biblical scholars have no way to disseminate biblical commentary and interpretation. This raises important questions, because the petitioner has not identified any main function of his job that does not involve producing biblical commentary and interpretation. If the job of a biblical scholar is to comment on scripture, and most biblical scholars do not have the opportunity to publish or present their commentary, then it is far from clear what most biblical scholars do that justifies their continued employment. (The petitioner is an ordained minister, but the record distinguishes between his part-time, volunteer ministerial work and his scholarly endeavors.) The petitioner's unsupported claim, therefore, leads to the apparently absurd conclusion that most biblical scholars simply produce commentary for its own sake, to no greater end. The AAO therefore finds the petitioner's claims to be implausible.

In a new letter, [redacted] claimed: "In our field . . . , papers are not cited the way science papers are." This claim would explain the absence of evidence of citations, but it remains that [redacted] previously claimed that "numerous scholars in the field cited [the petitioner's] published work." Furthermore, in the same letter, [redacted] asserted that "scholars in the academy . . . learn from and are influenced by such research and then proceed to incorporate it into their own work." Academic rigor demands that scholars identify and credit these influences.

The record shows that an article that the petitioner wrote for the *Journal of Asian and Asian American Theology* contains 24 footnoted bibliographic citations. Another article from *The Bible and Critical Theory* has a 28-item bibliography, identifies additional sources in 23 endnotes, and ends with formatting instructions on how to "[c]ite this article." The petitioner's book reviews are not similarly rich with citations, but the purpose of such writings is to discuss a specific, identified publication, which would render a bibliography redundant unless the review relied heavily on commentary from outside sources. Thus, the petitioner's own materials conclusively falsify [redacted] claim that biblical scholarship "papers are not cited the way science papers are."

[redacted] asserted:

> The impact of a learned article is demonstrated by the venue in which it is accepted for publication, in effect, how well known and respected such a venue is among

> scholars in the field. Impact is further demonstrated by the character of the article, its originality. In both respects [the petitioner's] work excels.
>
> [The petitioner] has published in the most prestigious journals in this field, and, as a result, many scholars have come to know his work through such publications. Because of that, he has been asked to serve on editorial boards of journals and has been invited to lecture at several universities overseas representing the United States.

[redacted] demonstrably false claim that articles in the petitioner's field "are not cited the way science papers are" undermines the credibility of his other claims. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The director denied the petition on August 22, 2011, stating that the petitioner did not establish the national scope of his work or "demonstrate that the national interest would be adversely affected if the petitioner would be required to obtain a labor certification." The director also found that the petitioner had not objectively established his impact on his field.

On appeal, counsel observes that the petitioner has published his work in nationally circulated journals and given speeches and presentations at many locations. The AAO agrees with counsel that this dissemination of the petitioner's work lends it national scope. The AAO does not, however, agree with the contention that these and other activities "placed him among the top scholars in the field of New Testament and Early Christian Studies."

Most of the appellate brief consists of quotations from witness letters quoted above and others in the record. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to

"fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 165.

The record contains no objective evidence to corroborate the witnesses' claims. It cannot suffice simply to submit copies of articles and book reviews and then have witnesses (whatever their numbers) assert that the articles and reviews are, themselves, self-evident proof of the petitioner's standing in his field. As noted previously, the letters contradict one another on the important question of citation of the petitioner's work.

Counsel contends that the petitioner's "expertise and experience are not the kind that can be described in a Labor Certification. Placing an ad is not the way to find an expert in this area. The only way to find an expert of [the petitioner's] caliber is to actively search the latest publications identifying the experts and then trying to recruit them directly."

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner submits no evidence that universities, seminaries, and other institutions that employ biblical scholars only fill vacancies by reviewing the literature and attempting to recruit published authors. For that matter, the record contains no evidence that any such institution has attempted to recruit the petitioner through his published work. If he is a leading figure in his field, as numerous witnesses have claimed, then the petitioner ought to have received many such offers.

The petitioner has shown that his doctoral studies have been productive, and that he has published and presented several papers during the course of his education. The record, however, fails to corroborate key witness claims, and many of those claims are simply not facially credible (such as the assertion that the petitioner is widely cited in a field where papers are not cited, and the claim that an article has impact not from being read but simply by existing in print).

Furthermore, counsel, on appeal, has not addressed the director's finding that the petitioner has not shown how it would be in the national interest to exempt him from the job offer/labor certification requirement. Claiming that the petitioner cannot obtain a labor certification does not answer the question, because an alien's inability to obtain a labor certification does not imply that the alien's work serves the national interest. The national interest waiver is not simply a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *See NYSDOT*, 22 I&N Dec. 223. The petitioner has not established how the nation (rather than a small community of specialized scholars) stands to benefit from the petitioner's work, in a way that the nation would not benefit from the work of a qualified United States worker performing the same function.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to

grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.